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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

LOCAL UNION NO. 698, RETAIL CLERKS' UNION, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, *Petitioner,*

v.

HARRY ANDERSON, HAROLD D. VERNON and W. A. SEILER, a Partnership doing business as West Point Market, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Local Union No. 698, Retail Clerks' Union, Affiliated with the American Federation of Labor, petitioner, prays that a writ of certiorari issue to review a final judgment of the Supreme Court of Ohio entered in the above entitled case on October 17, 1956 and its refusal to reconsider issued October 31, 1956.

OPINIONS BELOW

The temporary order of the Court of Common Pleas (R. 10) is unreported and is printed in Appendix A attached hereto. The permanent injunction and decree entered by the Court of Common Pleas (R. 117) is printed in Appendix B attached hereto. The opinion

of the Court of Appeals, Summit County (R. 124) is unreported and is printed in Appendix C attached hereto. The permanent injunction and degree entered by the Court of Appeals (R. 131) is printed in Appendix D attached hereto. The decision of the Supreme Court of Ohio (R. 138) is printed in Appendix E attached hereto. The decision of the Supreme Court of Ohio (R. 138) dismissing petitioner's appeal "filed as of right herein" for the reason that "no debatable constitutional question is involved" (R. 138) is reported in 29 Ohio Bar No. 31, October 22, 1956, and is printed in Appendix F attached hereto. The Supreme Court of Ohio refused reconsideration on October 31, 1956. Such decision is unreported but appears at page 884, Ohio State Bar Association's Reports, 29 Ohio Bar #43, November 5, 1956, and is attached hereto as Appendix G.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on October 17, 1956 (R. 138). Rehearing was denied on October 31, 1956 (R. 139). On January 22, 1957, Mr. Justice Reed entered an order extending time to file petition for writ of certiorari to March 14, 1957.

The decision below is reviewable under 28 U.S.C. Sec. 1257 (3). The jurisdiction of this Court more fully appears from the Statement of the Case.

QUESTIONS PRESENTED

1. Whether a state, with no labor relations statute, may enjoin a union's peaceful picketing for a new contract, after the employer had previously destroyed the union's majority and refused to negotiate for a

successor agreement, without depriving the union of free speech rights under the First and Fourteenth Amendments?

2. Whether a labor union, in a state with no labor relations statute, has the constitutionally protected right of peaceful picketing for the purpose of securing a contract for only its members?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendments to United States Constitution, Article XIV, Sec. 1, as follows: ". . . nor shall any State deprive any person of life, liberty or property without due process of law; . . ."

Amendments to United States Constitution, Article I, as follows: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

STATEMENT OF THE CASE

Petitioner is a local labor union in Akron, Ohio, affiliated with the Retail Clerks International Association, AFL-CIO. Respondent is an employer, organized as a partnership consisting of Harold Vernon, Harry Anderson, and W. A. Seiler, doing business as West Point Market at 1711 West Market Street, Akron, Ohio. Respondent engages in retailing groceries and meat, and employed nine persons in the grocery department at all times material herein. It was agreed by the parties that respondent's business does not affect interstate commerce, and thus there is no claim that any federal statute applies. Ohio is one of numerous states that has no labor relations statute concerning codes of fair conduct for employers and unions.

On November 12, 1953, petitioner and respondent executed a collective bargaining contract, covering terms and conditions of employment for the nine persons employed in respondent's grocery department (R. 6). This contract contained a so-called union shop provision, wherein all nine employees became enrolled as members of petitioners (R. 6). This agreement expired October 30, 1954 (R. 6).

Prior to the expiration date of the collective bargaining agreement, petitioner sent notice by letter of August 22, 1954, to respondent that it desired to negotiate a new labor contract to take effect at the time of expiration of the 1953-1954 agreement (R. 112).

Thereafter, on or about August 30, 1954, respondent, through one of its partners, Harry Vernon, called each one of the nine employees separately and individually into its office (R. 36-64-71-80). Respondent had prepared a paper for the signature of each employee, signifying that each employee was withdrawing his membership from the union (R. 36-64-71-80). The three employees who testified in the proceedings below stated that they were told to sign the paper or they could not work there (R. 69-71-80). This testimony was never disputed by the respondent in any way. In addition to the threat of discharge, it was further revealed that respondent offered as an inducement to quit the union an insurance plan better than the one provided by the union (R. 72). This testimony was never disputed by the respondent in any way. Six of the employees signed the withdrawal statement, while three refused (R. 68).

Nevertheless, six of the employees involved, including three of those who had signed the withdrawal

statement, attended a union meeting in September, 1954, where the subject of a strike in the absence of a contract was discussed (R. 73). Radabaugh, the union business agent, at a union meeting, told some of respondent's employees that if no contract was secured, he was going to call a strike (R. 75).

Respondent thereafter refused to negotiate with petitioner for a successor agreement on the grounds that petitioner no longer represented a majority of respondent's employees. Respondent employer referred petitioner union to its attorney, where, in meeting had, no substantive terms of a new labor agreement were ever discussed (R. 86-90).

On November 22, 1954, after the expiration of the contract, petitioner placed pickets at front and rear entrances of respondent's store, carrying banners containing the words, "Some employees on strike." The picketing was peaceful at all times. Petitioner did not contact anyone to tell them not to cross the picket line and did not solicit any union not to make deliveries (R. 89). Petitioner's president, Frazee, while on the picket line, did ask some truck drivers who approached the picket line not to make deliveries (R. 95). Frazee conceded that petitioner hoped to bring respondent around to negotiating a contract (R. 96), and that one of the ultimate purposes of the picketing was to secure a contract (R. 96).

Respondent employer on December 8, 1954, filed a petition for injunctive relief in the Court of Common Pleas, Summit County, Ohio, alleging that no labor dispute existed between the parties and that the union's sole purpose in picketing was to coerce the employer to sign an agreement which would compel its em-

ployees to join a labor union against their will (R. 8). Upon a hearing, which consisted of the sole testimony taken in this case, a temporary restraining order was issued enjoining the picketing (R. 10-11). Upon trial, counsel stipulated that the transcript of evidence in the temporary hearing would be offered as all the evidence available, and upon such presentation, a permanent restraining order was issued by the Court of Common Pleas on August 26, 1955 (R. 117).

The Court of Common Pleas recognized that there was a strike on (R. 102) and further recognized the existence of a labor dispute (R. 109). However, the court interpreted the law of Ohio to make it unlawful to coerce a person to negotiate a contract (R. 108).

On appeal to the Court of Appeals for the Ninth Judicial District of Ohio, the judgment below was unanimously affirmed. That court, without any consideration of the undisputed testimony of three union witnesses that the employer made threats and offered inducements, stated that respondent Vernon told the employees he did not wish a union store and "asked" them to withdraw (R. 64-65). The Court of Appeals further stated that none of the employees individually made demands for changes in working conditions, and none of them voted for a strike (R. 125), but the union demanded a new contract (R. 126). Upon this, the Court concluded that the union, without a majority, was seeking to force the employer to bargain for the employment of union members (R. 128). The purpose of the picket line was to coerce employees into joining the union, said the Court of Appeals, and force the employer to accept the union as the bargaining agent (R. 130). This was unlawful conduct.

The Supreme Court of Ohio, when the cause was presented to it, dismissed the proceedings on the ground there was no debatable constitutional question involved (R. 137). This petition seeks review of the erroneous judgment of the Supreme Court of Ohio.

Presentation of the Federal Question

(a) In the Court of Common Pleas, Summit County, Ohio: The federal question was first presented by counsel for petitioner during oral argument following the taking of testimony at the hearing on the temporary restraining order. "I think as long as you don't hamper them in any way or restrain them in any way, as long as you advise them, there is a picket line that comes within your free speech and you can picket (R. 104)." Thereafter, in an answer filed after the hearing on the temporary restraining order, petitioner raised the federal question by the assertion in paragraph numbered 12, " . . . that the defendants are engaged in a legal and lawful picketing . . ." (R. 14).

(b) In the Court of Appeals for the Ninth Judicial District of Ohio: The case was presented under Ohio procedure on law and fact. The federal questions were raised in the same manner as in the Court of Common Pleas by pleading and argument, and were denied by implication in the opinion of the Court of Appeals wherein that court applied its view of the law of Ohio without specifically discussing the federal constitutional question.

(c) In the Supreme Court of Ohio: From the adverse ruling of the Court of Appeals for the Ninth Judicial District, petitioner filed its Motion to Certify Record to Supreme Court (R. 140), where such motion said: "Appellants (defendants) contend that this case

involves a question under the Constitution of the United States and of the State of Ohio, and that is, therefore entitled to appeal to the Supreme Court of Ohio from the Court of Appeals of Summit County, Ohio, as a matter of right pursuant to the provisions of the Revised General Code, Section 2505.29" (R. 140-141). Although not a part of the record, these questions were argued extensively in petitioner's brief in support of the motion. The Supreme Court of Ohio, in Journal No. 42, p. 157, October 17, 1956, stated: "On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause" (R. 138).

REASONS FOR GRANTING THE WRIT

I. Ohio's Restraint of Peaceful Picketing in a Labor Dispute Where a Union Seeks to Gain a Successor Contract Deprives Petitioners of Protected Free Speech Rights

This case presents the important public question of to what extent may states, with no labor relations statute establishing codes of fair conduct for employers and unions, enjoin peaceful picketing as contrary to public policy when unions and employers are engaged in a bona fide labor dispute. More fundamentally, how far may such states go in invoking unlawful purpose doctrines to aid one labor disputant against the other without abridging the standards established by this Court for constitutional protection of peaceful picketing?

Ohio, one of many states with no labor statute, has, by judicial determination of its highest court, set forth bounds of illegal conduct in peaceful picketing which would be enjoined by its courts. In *Chucales* v.

Royalty, 164 O. S. 214, at 224, the Ohio Supreme Court said:

> ". . . the common law public policy of Ohio may still regard peaceful picketing as unlawful where there is no dispute between the employer and his employees and where the picketing is conducted against the employer by persons who were never employed by him and who do not represent any one that ever was so employed and where it is conducted for the purpose of pressuring the employer to compel his employees to become members of the union. . . ."

As a statement of law, restraint of peaceful picketing in such circumstances would probably be upheld by this Court as being within the allowable area set forth in *Building Service Employees Union* v. *Gazzam*, 339 U.S. 532. But the facts of this case are far different from the confines of the doctrine set up in *Chucales* v. *Royalty, supra*, and the legal issues involved are considerably different from any of those before this Court in any picketing case of recent years.

Because of the sharp distinctions between this case and other picketing cases already decided by this Court, and because petitioner believes the questions presented go vastly beyond those before this Court in the Giboney-Hughes-Hanke-Gazzam-Graham[1] line of cases, petitioner wishes to analyze the operative facts with painstaking care and precision.

This dispute went into litigation from a background of an established collective bargaining relationship, a

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[1] *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490; *Hughes* v. *Superior Court*, 339 U.S. 460; *Teamsters Union* v. *Hanke*, 339 U.S. 470; *Building Service Employees Union* v. *Gazzam*, 339 U.S. 532; *Local Union No. 10* v. *Graham*, 345 U.S. 192.

factor present in none of the other recent limitation-of-picketing cases. Petitioner and respondent had entered into a labor contract on November 12, 1953, continuing until October 30, 1954 (R. 6-85-86), and under this contract, every eligible employee had become a member of the union. The collective bargaining relationship was established voluntarily by the parties, upon a showing that the union represented a majority of the eligible employees involved. This factor of majority, or total, union membership at an early stage in the circumstances is not present in any other unlawful purpose picketing case.

At an appropriate time prior to the expiration of the contract, petitioner sent notice to the respondent employer that it wished to negotiate changes in the existing agreement, and thereby continue it for another term (R. 112). Shortly, thereafter, on August 30, 1954, respondent Vernon called each of the nine employees individually into his office, and asked each one of them to sign a notice of withdrawal from the union (R. 79-80). There is direct testimony that Vernon made threats and inducements to three of the employees (R. 80), which is undisputed and uncontradicted on the record. From the nature of the testimony, it is a fair inference that Mr. Vernon made similar threats and inducements to some or all of the six employees who did sign the withdrawal form he had prepared for them. Whatever one may term Mr. Vernon's conduct, it is certain that he took affirmative steps to vitiate the union's majority among his employees. This salient factor is not present in any of the other cases where this Court has approved a state's unlawful object theory to permit it to restrain peaceful picketing, for in the Giboney-Hughes-Hanke-Gazzam-

Graham line of cases, the employers were generally unoffending victims of union pressure.

(In this connection, there is another striking factor in this case: whether or not the union had actually lost its majority, even though a majority signed the withdrawal paper presented to them by Mr. Vernon. At a union meeting in September, 1954, it was testified to at the hearing, three of respondents' employees who actually signed the withdrawal form were in attendance (R. 73), where the possibility of a strike was discussed. If Ohio had some procedure for secretly ascertaining the desires of employees concerning union membership, perhaps these other persons would have secretly voted for the union. On the other hand, in the absence of statutory protection of their right to belong to a union, it is little wonder that three souls less hardy than those who did honor the picket line had no desire to face their employer's wrath and power of discharge, and accordingly, quietly kept their union desires to themselves).

While Mr. Vernon's conduct would certainly be an unfair labor practice under federal law,[2] and under the statutes of many of the states having labor relations codes,[3] it is not suggested here that this Court should attempt to regulate unfair labor practices at a state level. Ohio, as a matter of public policy, may

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[2] Labor-Management Relations Act of 1947, Sec. 8 (a) (1), 29 U.S.C. Sec. 158 (a) (1); see also, 29 U.S.C., Sec. 158 (c).

[3] I.e., Colorado, Ch. 97, Sec. 94 (6), Colorado Statutes Annotated, where similar language to that of the National Labor Relations Act is found; see also, state statutes in Connecticut, SLL 16:227 (Bureau of National Affairs, Washington, D. C.); New York SLL 42:229 (BNA); Oregon, SLL 47:225 (BNA); Rhode Island, SLL 50:227 (BNA); Pennsylvania, SLL 48:221 (BNA); Utah, SLL 55:207 (BNA); and Wisconsin, SLL 60:225 (BNA).

choose as it wishes to allow any kind of employer anti-union conduct which other jurisdictions, both federal and state, may consider to be violative of any code of fair play. Respondent's course of conduct however, is a circumstance to be weighed in asking this Court to appraise the substantiality of the reasons advanced in support of its policy to deny petitioner its right of free communication. *Schneider* v. *State*, 308 U.S. 147, 162.[4] The question then becomes, may a state permit anti-union conduct by an employer which eliminates a union's majority among his employees, and then enjoin the union's peaceful picketing, even if for the purpose of regaining its lost majority, without violating the union's constitutionally protected rights under the Fourteenth Amendment?

Respondent thereafter refused to negotiate with the union on the grounds that petitioner no longer represented a majority of his employees (R. 6). Some three weeks after the expiration of the contract, and after the union's efforts to attempt negotiation of a new agreement had failed, pickets were placed around respondent's business. The three employees who had refused to sign the employer's prepared withdrawal sheet declined to cross the picket line and thus went

[4] In that case, Mr. Justice Roberts said, at 308 U.S. 147, 162: "In every case, therefore, where legislative abridgment of the right is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

on strike. At the hearing, petitioner conceded that one of its purposes in the picketing was to secure a contract with the employer.

The Ohio Court of Appeals took a far more selective view of the facts than are above presented. That court recited that respondent Vernon told his employees he did not wish a union store and asked them to withdraw, without any discussion of the coercive effect of Vernon's activities. The Ohio Court of Appeals emphasized that (1) none of the clerks made a demand for changes in working conditions, (2) none of the clerks voted for a strike, and (3) none of the clerks knew that a strike was on until the picket line appeared. The court ignored these equally operative circumstances: (1) the lawful collective bargaining agent of the clerks made a timely demand for negotiation of a new agreement (the August, 1954, request of the union), and that the collective bargaining agent would normally ask for changes in working conditions if allowed to do so; (2) no strike vote was taken, for none is required by law, but a strike was discussed by respondent's employees at a union meeting (R. 72-73); and (3) the union was acting for its members who were employees of respondent when it commenced picketing, after these employees had been involved in discussions of possible strike action at earlier union meetings (R. 72-73).

The Court of Appeals then later said: "This is a controversy where the union, without a majority of the employees in its membership, seeks, by means of banners and by requests to suppliers of merchandise, to force the employer to bargain for the employment of union members. Is this unlawful conduct as defined in the case law of Ohio? We think it is." The

court accorded controlling weight to the fact that the union no longer had a majority without any legal consideration of how its majority was lost. There is not the slightest evidence of any kind in the record that the union sought to force the employer "to bargain for the employment of union members." Terms of bargaining were never discussed, because the employer refused to meet with the union. Although the previous contract contained a union shop provision, such matters are always subject to collective bargaining and the new contract, if one had ever been attained, could as well have eliminated the union shop clause as retained it.

The Ohio Court of Appeals, later in its opinion, said that no dispute with the employees existed after the expiration of the contract, and then remarked, "The purpose of the picket line was to coerce the employees into rejoining the union and to force the employer, against his will, to accept the union as the bargaining agent of the employees. In such a situation, the picketing became unlawful under the public policy of this state." (R. 130).

Upon any view of the factual situation presented heretofore, it is apparent that the parties were involved in a labor dispute. There was a pressing, existing controversy over the negotiation of a successor labor contract, after the parties had previously lived under an agreement for one year. The Common Pleas court recognized the existence of a labor dispute when it stated, "I think there is a labor dispute if you want my curbstone opinion (R. 109)." Because none of the employees individually presented demands to their employer, the Court of Appeals apparently assumed, without ruling directly, that no labor dispute existed.

The existence of a bona fide labor dispute is important in establishing the context of the questions involved in this case, and demonstrates further that the facts of this controversy take this case far out of the bounds of Ohio's public policy statement in *Chucales* v. *Royalty*, supra.[5]

What remains is the intervention of the state on the side of one of the disputants in a labor controversy by proscribing peaceful picketing as violative of the state's public policy. The state may intervene on the side of disputants in any way it considers reasonable, but may its intervention be justified upon these facts when vital federal constitutional rights are involved? The problem is still that stated by Mr. Justice Frankfurter in *Teamsters Union* v. *Hanke*, 339 U.S. 470, at , wherein he recognized that,

> "The effort in the cases has been to strike a balance between the constitutional protection of of the element of communication in picketing and

[5] In *Chucales*, peaceful picketing was regarded as unlawful (1) where there is no dispute between the employer and his employees, (2) where the picketing is conducted against the employer by persons who were never employed by him and who do not represent any one that ever was so employed, and (3) where it is conducted for the purpose of pressuring the employer to compel his employees to become members of the union. In this case, (1) there was a dispute between the employer and at least some of his employees, (2) picketing was conducted by persons who represented union members who were employed by the employer (at least the three employees who retained their union membership), and (3) not only is there no evidence in the record that the picketing was conducted for the purpose of pressuring the employer to compel his employees to become members of the union, but fair inferences can be reasonably drawn that the picketing had as one of its purposes that of pressuring the employer to refrain from threating his employees with discharge if they chose to keep their union membership.

> 'the power of the State to set the limits of permissible contest open to industrial combatants.' *Thornhill* v. *Alabama,* 310 U.S. 88, 104. A state's judgment on striking such a balance is of course subject to the limitations of the Fourteenth Amendment."

Petitioner asserts that Ohio has gone beyond the fair balance in setting the limits of permissible contest open to industrial combatants. Its judgment, while admittedly entitled to weight, must be limited by the Fourteenth Amendment when it would do away with the constitutional protection of the element of communication in picketing when a union strives to regain that which it had lost through the employer's unfair conduct. These issues are of fundamental public importance in regulating the right of unions and employees to peacefully picket, and ought to be reviewed by this Court.

II. Petitioner Has the Constitutionally Protected Right to Picket for a Contract Covering Only Its Members in States With No Labor Relations Statute

There is a second important question inherent in the facts of this case that ought to be reviewed by this Court.

Notwithstanding all the other events in this case, three of the employees of respondent were active members of the union at the time of the strike. The picket sign language read, "Some employees on strike . . ." Despite the assertion of the Ohio Court of Appeals that the union sought to coerce the employer into the employment of union members and that its purpose was to coerce the employees into rejoining the union, there is not the slightest shred of evidence of any kind from which even a reasonable inference can be drawn that such was the purpose of the union's picketing.

Petitioner's agents admitted at the hearing they were seeking a contract, but nothing was ever said about the scope of the contract. No discussions of any kind were ever had with respondents, and no communications were addressed to them that would indicate in any way the coverage sought by the union in the contract it wanted.

There is actual support in the record for the view that petitioner was seeking a contract covering only those persons who were members of the union and employed by respondents. In its answer, at paragraph 5, the following is found: "5. Defendants deny that no labor dispute exists and by way of answer allege that there is a valid labor dispute and legal strike between *the employer and its employees as represented by this defendant;* that the trial court, in a temporary hearing, so found that there is a valid labor dispute and a valid legal strike (R. 13)" (Emphasis added). And at paragraph 12 of the answer: "12. Further answering, defendants say that there is a bona fide labor dispute and valid legal strike *between the employees as represented by the defendant union* and the employer plaintiff herein . . . (R. 14)" (Emphasis added). All the testimony in this cause was taken prior to the answer, so nothing additional was adduced after the answer was filed.

This being the case, the peaceful picketing for a members-only contract ought to be constitutionally protected. Certainly, a peaceful picket line where a union represented a majority of the employees with the purpose of attaining the negotiation of a contract would be constitutionally protected as an element of communication. The same protection for minority rights ought to be accorded.

It must be remembered again that Ohio is one of the majority of states without any comprehensive labor relations statute. There is no statutory procedure for lawfully ascertaining whether a union represents a majority of an employer's employees. There is no legal requirement, either by statute or common law, that a union in a labor contract represent all the employer's employees who may be within the scope of an appropriate bargaining unit. Ohio has no procedure for determining the scope of a unit of employees appropriate for bargaining, as does the federal statute and the laws of some of the states.[6] In the absence of such provisions, the parties themselves are left to framing the scope of their contract coverage by their own agreement.[7]

Therefore, the parties could have executed a lawful labor contract covering only the three employees who remained loyal to the union. Could not the three employees involved, therefor, peacefully picket their employer through their agent, the union, for a contract

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[6] National Labor Relations Act, Sec. 9, 29 U.S.C. Sec. 159; Colorado, SLL 15:235 (Bureau of National Affairs, Washington, D. C.); Connecticut, SLL 16:230 (BNA); Idaho, SLL 22:102 (BNA); Kansas, SLL 26:220 (BNA), Massachusetts SLL 31:233 (BNA); Utah, SLL 55:211 (BNA), Wisconsin, SLL 60:228 (BNA); New York, SLL 42:234 (BNA); Oregon, SLL 47:225 (BNA); Pennsylvania, SLL 48:225 (BNA); Rhode Island, SLL 50:231 (BNA).

[7] In the instant case, when petitioner and respondents entered into their labor agreement of November, 1953, they voluntarily included nine grocery clerks and omitted three employees in respondents' meat department. With no state procedure to guide them, the parties could as well have included all twelve of the employees under the contract coverage, or could have written a contract covering six employees, or three, or any number they desired. As a matter of fact, the record reveals that at one stage of their relationship, they agreed to relieve two of respondents' grocery clerks of the responsibility of joining the union and benefitting from the contract coverage (R. 89).

covering their working conditions? Could not one single employee peacefully picket his employer for changes in his working conditions, or for a written agreement to define his rights and responsibilities? And if one employee could do it, why not two, or even three, and why could they not do it through a representative to whom they paid dues and held membership, a labor union?

These are some of the problems inherent in restraining peaceful picketing where unions have actual members employed by the employer in states where there are no labor relations laws to mark the bounds of fair conduct. States with procedures to ascertain whether a union has sufficient members in an establishment to merit the lawful status of a recognized bargaining agent and procedures for determining the scope of the employment unit for which the parties are entitled to bargain would have none of these difficulties. But Ohio has chosen to do nothing about such matters among its employers and employees. Left free to establish the bounds of contract coverage by agreement, might not a union then lawfully seek to gain a contract for only its members and exercise its weapon of a peaceful picket line in an effort to accomplish its objectives? And where a union seeks such a contract, may a state be permitted to abrogate the constitutional right of the union and its members to make known to the public the existence of a dispute by the speech mechanism of peaceful picketing? May the state courts be permitted to hide from these penetrating questions by the simple technique of making findings of unlawful purpose without specific evidence in the record to sustain such findings? Petitioner does not believe that constitutional rights can be abrogated so easily by state courts. Restraint of peaceful picketing

by a state in such circumstances is not striking a fair balance on the limits of permissible contest between industrial disputants. This Court ought to so find.

CONCLUSION

For reasons heretofore presented, this petition for certiorari should be granted.

Respectfully submitted,

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